

# SOME THOUGHTS ABOUT PARCEL MAPPING AND THE PUBLIC RECORDS ACT

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*Disclaimer: Of course I am not an attorney, but I'm not too worried about all that, because nobody listens to me anyway!!!!*

## The original act, and changes

Idaho's Public Records Act was first passed in 1990. The original law (Session Law 1990, Chapter 213) established several key principles which are still in the present law (Idaho Code 9-337 through 9-349A). These include:

- definitions, including:
  - "Custodian" means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives
  - "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.
  - "Local agency" means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.
- the idea that copying fees could not exceed the "direct cost of reproduction", with associated labor costs to be free for smaller jobs.
- The idea that all public records are available for inspection and copying, with (originally) 36 exceptions.

With this in mind, let's discuss these main points, and how they apply today.

## Who is the "custodian"?

The Assessor must inventory, determine ownership of, and assess a value for all the real property in his county. When the Assessor's work is done, he turns the parcel and ownership and value information (the "roll") over to the Recorder, who determines levies. Then the Recorder turns the roll over to the Treasurer, who sends out tax bills based on assessed values and levies. (And, in many counties, the roll information resides on a central computer system that is under the control of the county Commissioners.)

So, who is the custodian of county database information with parcel number, property address, owner name, and assessed value? Is it the Assessor? The Recorder? The Treasurer? The I.T. Department (Commissioners)? If you look at the definition of "Custodian" above, I tend to think the answer is "all of the above". Practically, however, I think most outside requests also want legal description and residential (and other) characteristics, so the greatest pressure is placed on the Assessor.

## What can we charge?

I don't want to get too deep into this subject. In the past, I've heard two answers to the question. Some say that, for xerographic copies, this translates into the cost of toner and paper, and no more. Others have said that, for such copies, this translates into the cost of toner and paper, plus the prorated cost of buying or leasing the copy machine, and the costs of maintaining it. Practically, regardless of which approach you take, the administrative cost of charging for paper copies is probably greater than the cost of the copies—so why charge at all?

Digital data in unusual formats raises special questions. In Ada County, the I.T. Department was formerly happy to give you a big ugly tape with AS/400 format data that very few people could work with—and they charged a healthy fee for all the time needed to write the tape. At the same time, the Assessor's GIS people would cut you a CD with most of the same data in a user-friendly DBF format for the cost of a CD. (CD's used to cost as much as \$10, but now they are too cheap to charge for.) Recently, a new section was added to the Public Records Act (I.C. 9-338)(8)(b)(iii). It states that an agency can charge a fee that covers the “agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.” This new provision may apply to GIS work, if someone wants coverage, shapefile, geodatabase, or AutoCAD format data, and that's not the way you have it.

### **Which exemptions matter?**

There are now 87 exemptions to the Public Records Act, up from the original 36. One that matters is the very first, which says that federal statutes trump Idaho's law. Thus, if you have a copyrighted CD or DVD with data or images, you do not have to make a copy of it.

Another affects Assessors, and was added a few years ago. It exempts from disclosure “records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.” This doesn't matter too much to GIS, but GIS people who give out various assessment data should make sure they don't give out such information.

### **A key addition: the prohibition on mailing lists**

#### **The original mailing list law**

Just two years after the original Public Records Act was passed, in 1992, a new section (I.C. 9-348) was added prohibiting public agencies from distributing or selling mailing lists. The Legislature was clearly serious about this law, because it includes penalties up to \$1000 for violation.

The law says you *can* give out a mailing list—if you first get the permission of everyone whose name is on the list!

The original and subsequent laws have one huge gaping hole in them. Section 3 says that the law does not apply to lists of registered voters. Thus, you can freely request (and I assume the Recorder is the Custodian) a copy of the names of registered voters, and their addresses, and use it as a mailing list.

#### **The utilities addition**

Two years later, in 1994, an addition was made. It is section 7 in the attached law, and it allows utilities to use public record information for mailing lists.

#### **The 1997 additions**

After five years, the Public Records Act clearly had some problems. These were addressed in 1997 Session Laws Chapter 152. One change allowed agencies to charge for labor, if requests required a lot of time.

The most important changes for our purposes concern mailing lists. First, custodians are allowed to “ensure that the requested record or information will not be used for purposes of a mailing or telephone list.” Thus, you can ask a question like “Are you going to use this data for a mailing list?”, or “You aren't going to use this data for a mailing list, are you?” Presumably, you could ask requesters to sign some document promising to not use data for a mailing list.

The second major change was the addition of section 8 to I.C. 9-348. This states: “**This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.**” The way I read this, here are examples of this exception to the “no mailing lists” law:

- You are the county's Planning department, and county ordinance requires you to issue a 300 foot radius

notice; you can use the Assessor's file of owner names and property addresses.

- You are a city road department, and Idaho Code requires you to notify property owners that you are vacating an alley.
- You are the State Lands Department, and a court order requires you to notify all property owners in a county about a land sale.

Therefore, if you are a government agency (or maybe even a private entity) and you are required by law, etc., to give notice to property owners, you ***should be able to*** obtain data from an agency for use as a mailing list. If I was asked to put such a request in writing, I would say something like:

“Under provisions of Idaho Code 9-348(8), I request a copy of the XXXX database, to give notice as required by Idaho Code XX-XXX. We would prefer to receive the data in DBF format, but comma delimited text or Excel or other formats might be acceptable. We can provide a CD or DVD, or can pay for one; an electronic transfer would also work. Please contact me at 208-555-1212 so we can discuss this. Thank you for your cooperation.”

*Did I say I'm not an attorney?????*

### **Public Records Act vs. the County's Ability to Charge for Computerized Mapping System Data**

Idaho Code 31-875 applies to counties that create a computerized mapping system. It says:

31-875.Computerized mapping system fees. (1) As used in this section, "computerized mapping system" or "system" means the digital storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography, water, streets and geographic features.

(2) In a county which develops a computerized mapping system, the board of county commissioners may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to paper maps produced from the computerized mapping system.

Clearly, this law differs from the Public Records Act. My personal views are:

- This law exists somehow in parallel to the Public Records Act. You can charge more than the direct cost of reproduction, but you can't simply refuse to make the data available.
- In theory, if you built your whole county's database around GIS, you could say that *everything* is part of the computerized mapping system, and insist on selling it *all*. In Ada County, I tried to maintain a firm line between the true GIS map-related data, and the Assessor's tabular database of parcel information. I would sell the former, and dispense the latter at direct cost of reproduction. That seems most true to the definition in section 1.
- By extension to fee charging, commissioners can establish reasonable conditions of use: for example, purchasers can't resell or distribute the data unless permitted.

### **One More Thing**

In researching this subject, I ran across the 2010 Legislature's proposed Senate Bill 1378. That law would extend “address confidentiality” to a large range of law enforcement personnel, including judges and probation officers. This seems to mean that you might have to substitute some neutral address for the true home address of these personnel. The bill seems to have died, but it does point towards some similar legislation passing some time in the future.

requirements of section 53-602, Idaho Code;

(2) The address of the registered office and the name and business, residence, or mailing address of the registered agent required to be maintained by the provisions of section 53-604, Idaho Code;

(3) ~~The latest date certain upon which the limited liability company is to dissolve;~~

(4) If management of the limited liability company is vested in a manager or managers, a statement to that effect;

(5) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;

(6) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company;

(7) If the limited liability company is a professional service limited liability company, the principal profession for which members are duly licensed or otherwise legally authorized to render professional services.

Approved March 17, 1997.

#### CHAPTER 152

(S.B. No. 1113, As Amended)

#### AN ACT

RELATING TO THE PUBLIC RECORDS ACT; AMENDING SECTION 9-338, IDAHO CODE, TO AUTHORIZE THE CUSTODIAN TO MAKE CERTAIN INQUIRIES OF A PERSON WHO APPLIES FOR A PUBLIC RECORD, TO PROVIDE FOR A FEE FOR LABOR COSTS IF CERTAIN CIRCUMSTANCES OCCUR AND TO PROVIDE THE PUBLIC AGENCY MAY NOT CHARGE ANY COST OR FEE FOR COPIES OR LABOR WHEN THE REQUESTER DEMONSTRATES CERTAIN CONDITIONS; AND AMENDING SECTION 9-348, IDAHO CODE, TO PROVIDE THAT THE PROHIBITION FOR PROVIDING MAILING OR TELEPHONE LISTS DOES NOT APPLY TO LISTS TO BE USED TO GIVE NOTICE REQUIRED BY ANY STATUTE, ORDINANCE, RULE, LAW OR BY ANY GOVERNING AGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-338, Idaho Code, be, and the same is hereby amended to read as follows:

9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) The custodian shall make no inquiry of any person who applies for a public record, except that to verify the identity of a person requesting a record in accordance with section 9-342, Idaho Code, to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law. The person may be required to make a written request and provide their name, a mailing address and telephone number.

(5) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8) (a) A public agency or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided however, that a public agency or public official may establish a fee to recover the actual labor cost associated with locating and copying documents if:

- (i) The request is for more than one hundred (100) pages of paper records; or
- (ii) The request includes records from which nonpublic information must be deleted; or
- (iii) The actual labor associated with locating and copying documents for a request exceeds two (2) person hours.

(b) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

(ai) The agency's direct cost of copying the information in that form;

(bi) The standard cost, if any, for selling the same information in the form of a publication.

The custodian may require advance payment of the cost of copying. Any money received by the public agency shall be credited to the

account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(c) The public agency may not charge any cost or fee for copies or labor when the requester demonstrates either:

- (i) The inability to pay; or
- (ii) That the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

(9) A public agency shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency from disclosing statistical information that is not descriptive of an identifiable person or persons.

SECTION 2. That Section 9-348, Idaho Code, be, and the same is hereby amended to read as follows:

9-348. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELEPHONE NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4), (5), (6), and (7) and (8) of this section, in order to protect the privacy of those who deal with public agencies:

- (a) No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and
- (b) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agricul-

ture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the court in an amount not in excess of one thousand dollars (\$1,000) which shall be paid into the general account.

Approved March 17, 1997.

# CHAPTER 153 (S.B. No. 1207)

## AN ACT

RELATING TO LOSSES OF MONEY OR INDEBTEDNESS; AMENDING CHAPTER 10, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1014A, IDAHO CODE, TO REQUIRE REPORTING TO THE STATE TREASURER BY STATE AGENCIES OR OFFICERS OF LOSSES OF MONEY IN EXCESS OF TWO HUNDRED DOLLARS OR LOSSES OF EVIDENCES OF INDEBTEDNESS WITHIN A TIME CERTAIN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 10, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1014A, Idaho Code, and to read as follows:

59-1014A. ACCOUNTING FOR LOSSES. All state officers and agencies shall, immediately upon discovering any loss of money in excess of two hundred dollars (\$200) or evidences of indebtedness of the officer or agency, report the same, in writing within five (5) working days of the discovery of the loss to the state treasurer or shall notify the state treasurer by telephone within one (1) working day of the discovery of the loss.

Approved March 17, 1997.